Names, Inc. (a/k/a Peglin, Inc.) *and* Knitwear Independent Union. Case 4–CA–23404

November 29, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

Upon a charge filed by Knitwear Independent Union, the Union, on January 5, 1995, the General Counsel of the National Labor Relations Board issued a complaint on April 28, 1995, against Names, Inc. (a/k/a Peglin, Inc.), the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On October 23, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On October 25, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated August 9, 1995, notified the Respondent that unless an answer were received by August 16, 1995, a Motion for Summary Judgment would be filed. By Order dated August 18, 1995, the time for filing an answer was extended to September 30, 1995. Nevertheless, the Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.[1]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Delaware corporation, has been engaged in the design, manufacture, and sale of girls', boys', and infants' clothing at a facility located at 201 North Third Street, Allentown, Pennsylvania. During the year preceding issuance of the complaint, the Respondent, in conducting its business operations, sold and shipped from the Allentown facility goods valued in excess of $50,000 directly to points outside the Commonwealth of Pennsylvania. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All non-supervisory production, packing, shipping and cutting workers employed by the Respondent, excluding guards and supervisors as defined in the Act.

Since at least 1993 and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and has been recognized as the representative by the Respondent. This recognition has been embodied in collective-bargaining agreements, the most recent of which (the agreement) is effective by its terms from November 6, 1994, through November 7, 1997. At all material times since at least 1993, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

In November and December 1994, the Respondent laid off and/or terminated unit employees and failed and refused to pay unit employees vacation benefits as provided in article VIII of the agreement. These subjects relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in this conduct without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct.

About December 8, 1994, the Union, by letter, requested that the Respondent bargain collectively about the following subjects: the effects of the planned clo-

[1] The complaint indicates that on about November 17, 1994, Respondent filed a petition for bankruptcy pursuant to Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York, 94-B-45379. It is well established, however, that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See *Phoenix Co.*, 274 NLRB 995 (1985), and cases cited therein.

sure of the Allentown plant, the layoff/termination of employees, the selection of employees for layoff/termination, the failure to remit to the Union dues deducted from employees' paychecks, the failure to pay employees' vacation benefits, and the suspension of employees' medical benefits. Since about December 8, 1994, the Respondent has failed and refused to bargain collectively about these subjects. These subjects relate to the wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) by laying off and/or terminating unit employees in November and December 1994 without giving the Union notice or an opportunity to bargain over the decision and its effects, we shall order the Respondent to make the laid-off and/or terminated employees whole for any resulting loss of earnings from the date of their layoff and/or termination until the date the facility closed. Backpay shall be computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[2]

In addition, having found that the Respondent violated Section 8(a)(5) and (1) by failing, in November and December 1994, to pay unit employees contractually required vacation benefits as provided in article VIII of the agreement, we shall order the Respondent to make the unit employees whole by paying them their accrued vacation benefits as required by the agreement, with interest as prescribed in *New Horizons for the Retarded*, supra.

Further, having found that the Respondent violated Section 8(a)(5) and (1) by failing, since about December 8, 1994, to bargain with the Union over its failure to remit deducted dues to the Union and its suspension of employee medical benefits, we shall order the Respondent to remit any and all withheld dues to the Union as required by the agreement, with interest as prescribed in *New Horizons for the Retarded*, supra, and to make whole the unit employees by reimbursing them for any expenses ensuing from its suspension of medical benefits prior to the closure of the facility, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, supra.

In addition, having found that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to bargain with the Union over the effects of the planned closure of the facility, we shall order the Respondent to bargain with the Union on request. In order to ensure meaningful bargaining, and in order to effectuate the purposes of the Act, we shall accompany the bargaining order with a limited backpay requirement designed both to make whole the employees for losses suffered as a result of the violations and to re-create in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the terminated employees in a manner similar to that required in *Transmarine Navigation Corp*., 170 NLRB 389 (1968).

Thus, the Respondent shall pay its terminated employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closing of its facility on its employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 days of the date of this Decision and Order, or to commence negotiations within 5 days of the Respondent's notice of its desire to bargain with the Union; (4) the Union's subsequent failure to bargain in good faith; but in no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent terminated its operations, to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner; provided, however, that in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings which the terminated employees would normally have received during the applicable period, less

[2] Inasmuch as the Respondent's facility appears to be closed, we shall not include the usual reinstatement remedy for the Respondent's 8(a)(5)-layoff violation. See *Stamping Specialty Co*., 294 NLRB 703, 705 fn. 10 (1989).

any net interim earnings, and shall be computed in accordance with *F. W. Woolworth Co*., supra, with interest as prescribed in *New Horizons for the Retarded*, supra.

Finally, in view of the fact that the Respondent's facility appears to be closed, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its former employees in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, Names, Inc. (a/k/a Peglin, Inc.), Allentown, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Laying off and/or terminating unit employees and failing and refusing to pay unit employees vacation benefits as provided in article VIII of the agreement, without providing Knitwear Independent Union notice or an opportunity to bargain. The unit includes the following employees:

> All non-supervisory production, packing, shipping and cutting workers employed by the Respondent, excluding guards and supervisors as defined in the Act.

(b) Failing or refusing to bargain with the Union about the effects of the planned closure of its Allentown plant, the layoff/termination of employees, the selection of employees for layoff/termination, the failure to remit to the Union dues deducted from employee paychecks, the failure to pay employee vacation benefits, and the suspension of employee medical benefits.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole the unit employees who were unilaterally laid off and/or terminated in November and December 1994 for any loss of earnings resulting from their layoff and/or termination prior to the closure of the facility, with interest, in the manner set forth in the remedy section of this decision.

(b) Make the unit employees whole for its failure to pay them their accrued vacation benefits as provided in article VIII of the agreement, with interest, in the manner set forth in the remedy section of this decision.

(c) Remit to the Union any and all dues that were deducted from the pay of unit employees pursuant to valid dues-checkoff authorizations but that have not been remitted, with interest, as set forth in the remedy section of this decision.

(d) Make whole the unit employees for any expenses incurred as a result of its unilateral suspension of employee medical benefits prior to the closure of the facility, with interest, as set forth in the remedy section of this decision.

(e) On request, bargain with the Union over the effects on unit employees of the closure of the facility, reduce to writing any agreement reached as a result of such bargaining, and pay limited backpay to the unit employees, in the manner set forth in the remedy section of this decision.

(f) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(g) Mail signed and dated copies of the attached notice, marked ''Appendix,''[3] to the Union and all unit employees. Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be mailed immediately upon receipt by the Respondent to the last known address of each employee.

(h) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT lay off and/or terminate unit employees or fail or refuse to pay unit employees vacation benefits as provided in article VIII of the agreement, without providing Knitwear Independent Union notice or an opportunity to bargain. The unit includes the following employees:

> All non-supervisory production, packing, shipping and cutting workers employed by us, excluding guards and supervisors as defined in the Act.

WE WILL NOT fail or refuse to bargain with the Union about the effects of the planned closure of our Allentown plant, the layoff/termination of employees,

the selection of employees for layoff/termination, the failure to remit to the Union dues deducted from employee paychecks, the failure to pay employee vacation benefits, and the suspension of employee medical benefits.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL make whole the unit employees who we unilaterally laid off and/or terminated in November and December 1994 for any loss of earnings resulting from their layoff and/or termination prior to the closure of the facility, with interest.

WE WILL make the unit employees whole for our failure in November and December 1994 to pay them their accrued vacation benefits as provided in article VIII of the agreement, with interest.

WE WILL remit to the Union any and all dues that were deducted from the pay of unit employees pursuant to valid dues-checkoff authorizations but that have not been remitted, with interest.

WE WILL make whole the unit employees for any expenses incurred as a result of our unilateral suspension of employee medical benefits prior to the closure of the facility, with interest.

WE WILL, on request, bargain with the Union over the effects on unit employees of the closure of the facility, reduce to writing any agreement reached as a result of such bargaining, and pay limited backpay to the unit employees in the manner set forth in the decision of the National Labor Relations Board.

NAMES, INC. (A/K/A PEGLIN, INC.)